

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 20 2003

OFFICE OF
MANAGING DIRECTOR

Jeffrey L. Timmons, P.C.
3235 Satellite Blvd.
Building 400, Suite 300
Duluth, Georgia 30096-8688

Re: Station KCFG(TV), Flagstaff, AZ
KM Television of Flagstaff, L.L.C.
Request for Waiver of FY 2003 Regulatory Fee
Fee Control No. 00000RROG-03-109

Dear Mr. Timmons:

This is in response to your request dated September 24, 2003, filed on behalf of KM Television of Flagstaff, L.L.C. (KM Television), for a waiver or reduction of the \$43,225.00 fiscal year (FY) 2003 regulatory fee for Station KCFG(TV), Flagstaff, Arizona, based upon financial hardship.¹ Our records reflect that KM Television has paid \$4,450.00 of the \$43,225.00 FY 2003 regulatory fee at issue here.

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." *See Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995). In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals, deductions for depreciation or similar items are considered funds available to pay the fees.

You submit a copy of KM Television's unaudited "Statement of Revenue and Expenses - Income Tax Basis" for the 2002 calendar year. You recite that this statement "is the most recent full year for which financial statements are available for KM[Television.]" KM Television's "Statement of Revenue and Expenses - Income Tax Basis" indicates that KM Television suffered a financial loss in the 2002 calendar year of \$117,200.00, which

¹ You raise additional arguments in support of your waiver request which we do not address given our finding that payment of the regulatory fee would cause KM Television undue financial hardship.

was only partially offset by depreciation, payroll expenses, and expenses identified as "Other Expenses." Our review of KM Television's financial loss is based upon KM Television's "Statement of Revenue and Expenses – Income Tax Basis[.]" which reflects expenses but no revenues, and your statements that the station has not "beg[u]n to sell advertising" and that America One Network (the station's programmer) has not begun "to generate any advertising revenue for the station[.]"² Given that KM Television suffered a financial loss in the 2002 calendar year, we grant your request for a full waiver of the \$43,225.00 regulatory fee for FY 2003. Accordingly, we also grant KM Television a refund of the \$4,450.00 that KM Television paid in connection with the FY 2003 regulatory fee.

A check made payable to the maker of the original check and drawn in the amount of \$4,450.00, will be sent to you at the earliest practicable time. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger", with a small circular mark to the left of the first name.

Mark A. Reger
Chief Financial Officer

² Although you also state somewhat inconsistently that "almost no revenues [were] generated by the station," we construe this to mean that income was minimal and did not alter the station's deficit position.

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JEFFREY L. TIMMONS, P.C.
3235 Satellite Boulevard, Building 400, Suite 300
Duluth, Georgia 30096-8688
Telephone: 770-291-2170
Facsimile: 770-291-2171
E-mail: jeff@timmonspc.com

ORIGINAL

September 24, 2003

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SEP 25 2003

FCC - MAILROOM

VIA FEDERAL EXPRESS

Office of the Managing Director
Federal Communications Commission
445 12th Street, S.W., Room 1-A625
Washington, D.C. 20554
Attn: Regulatory Fee Waiver/Reduction Request

RE: KM Television of Flagstaff, L.L.C.
Television Station KCFG(TV), Flagstaff, Arizona

Dear FCC:

KM Television of Flagstaff, L.L.C. ("KM"), licensee of full power commercial television station KCFG(TV), Flagstaff, Arizona (Facility ID No. 35104, "KCFG"), by its counsel, and pursuant to the Commission's Regulatory Fees Fact Sheet, Waivers, Reductions and Deferments of Regulatory Fees (dated July 2003, the "Waiver Fact Sheet"), respectfully requests the waiver or, in the alternative, a reduction in the annual regulatory fee to be paid by KM for KCFG for fiscal year 2002. The Waiver Fact Sheet states that the Commission will consider the waiver or reduction of annual regulatory fees in extraordinary and compelling circumstances, upon a showing that such a waiver or reduction would serve the public interest. For the reasons stated herein, KM also respectfully requests that the Commission defer payment of the regulatory fee until the Commission acts upon this request for waiver; however, KM is timely paying (i.e., by September 25, 2003) the reduced regulatory fee of \$4,450 proposed herein.¹

KM completed construction and first put KCFG on the air as a new full power commercial television station in December 2000, and filed a license to cover application on December 20, 2000 (File No. BLCT-20001220ACM), which was granted on July 18, 2001. Since KCFG and Flagstaff are assigned to the Phoenix, Arizona Designated Market Area ("DMA"), which ranked as DMA No. 17, see 2001 *Television & Cable Factbook* at A-62 ("2001 Factbook"), the regulatory fee for KCFG would be \$43,225. See Regulatory Fees Fact Sheet, What You Owe - Media Services Licensees at

¹ KM filed a similar request for waiver or reduction of the annual regulatory fee due for KCFG for Fiscal Year 2002 on September 25, 2002, which remains pending.

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3 (\$43,225 regulatory fee for commercial VHF stations in DMA markets 11-25) (the "Media Services Fact Sheet").

Assessing KCFG with the \$43,225 annual regulatory fee due for a DMA 11-25 station does not reflect the realities of KCFG's service area, market and economic situation, and therefore the regulatory fees should be reduced for fiscal year 2003, if not waived completely. KCFG currently is licensed and operates with only 1 kilowatt effective radiated power ("ERP") due to a power restriction at its antenna site, and as a result KCFG was predicted to serve a population of only 74,677 persons (1990 U.S. Census) within its predicted Grade B contour,² which is only a small fraction (about 2%) as compared to the 1,441,660 households in the Phoenix DMA. See 2001 Factbook at A-62. Flagstaff itself has a current (2000 U.S. Census) population of only 52,894 persons, as compared to the 1,321,045 person population of Phoenix (the principal community in the Phoenix DMA, and where the vast majority of the population in the DMA resides).

Since Flagstaff is more than 130 miles from Phoenix, with mountain terrain between the two communities, KCFG can not expect to serve Phoenix with an off-the-air signal. Nor would KM likely be successful in reaching Phoenix-area viewers by gaining mandatory carriage (or "must carry") of KCFG on Phoenix-area cable television systems; the Commission has typically found in favor of Phoenix cable television systems seeking to delete Flagstaff stations from their mandatory carriage obligations under market modification requests.³ Accordingly, since KCFG does not serve, and indeed is unable to serve or expect to serve, Phoenix or much of the Phoenix DMA, the annual regulatory fee for KCFG should be reduced, if not waived. Specifically, KM proposes that the annual regulatory fee be reduced to the \$4,450 due from commercial VHF stations in "Remaining Markets" (i.e., DMA markets ranked below the top 100 DMAs), see Media Services Fact Sheet at 3, which more accurately reflects the current and potential service area, or "market", of KCFG.

Assessing KCFG the \$43,225 fee due from Phoenix DMA No. 17 stations would ignore the facts and market realities faced by KM and KCFG, and would harm the service that may be offered by KCFG, and would also impose a financial hardship on KM; therefore, not only should the regulatory fee for KCFG be reduced to \$4,450 (or waived), KM should also be granted a deferment

² See File No. BPCT-19950317KN at Section V-C - TV Broadcast Engineering Data, Question 17 (as amended February 2, 1996, the current Form 310 engineering for the station's licensed parameters).

³ See, e.g., CoxCom, Inc., File No. CSR-5887-A, Memorandum Opinion and Order, DA 02-2295 (released September 18, 2002). In CoxCom, the Commission granted a cable television operator's request to delete Phoenix and 28 other Phoenix-area communities from the definition of the "market" within which full power television station KFPH(TV), Flagstaff, Arizona is entitled to must carry rights. Id. The Commission relied primarily on the distance between Flagstaff and Phoenix, as well as KFPH(TV)'s lack of Grade B or better signal coverage over Phoenix and the other communities, as the basis for finding that KFPH(TV) did not serve Phoenix for purposes of the definition of its local market for must carry purposes. Id. KM notes that KFPH(TV) is licensed to operate on Channel 13 with the maximum 316 kilowatts ERP, see 2001 Factbook at A-63, and therefore would have a much greater service area even than KCFG(TV).

from paying the full \$43,225 that otherwise would be due from a commercial VHF station in DMA 11-25 pending the outcome of its reduction or waiver request.

Attached hereto as Exhibit A are an unaudited Statement of Revenues & Expenses (or "profit and loss" statement, the "P&L") for KM for calendar year 2002 (which is also KM's fiscal year, and is the most recent full year for which financial statements are available for KM) and a Statement of Assets, Liabilities & Equity (or "Balance Sheet") as of December 31, 2002 for KM, certified as accurate by an officer of KM. The P&L reflects that KM suffered a loss of over \$170,000 on KCFG in 2002, with almost no revenues generated by the station. The poor financial condition of KM and KCFG reflects that the station is a new station that had just commenced broadcasting in December 2000; was able to secure and commence broadcasting the America One Network programming (which as a fringe network has yet to generate any advertising revenue for the station) in January 2002; and due to the currently weak signal of KCFG (1 kilowatt ERP, due to the transmitter site limitation) and relatively weak programming, the station has not been able to realistically market or promote the station or begin to sell advertising.

KM's financial hardship with KCFG has been further exacerbated by KM's expenditure of over \$100,000 (see File No. BEPCDT-20020430ABI) in the spring of 2002 to construct and implement digital television ("DTV") facilities for KCFG (under special temporary authority, see File Nos. BDSTA-20020422ABC, as extended by BEPCDT-20020430ABI) to meet the May 1, 2002 deadline for commercial stations to have their DTV signals on the air. KM also had an application pending for close to two years to greatly improve the signal of KCFG, by changing to a better antenna site and increasing the ERP of the station to the maximum 316 kilowatts ERP permitted (see File No. BPCT-20010706AAQ), which was granted in April 2003. KM expects to expend considerable funds in 2004 implementing this facilities and service improvement, and indeed KM has been paying \$2,000 per month rent for over 3 years now (since September 1, 2000) to secure the use of its modification site, in anticipation of action by the Commission on the modification application. In the interim, KM is also pursuing its must carry rights with area cable television systems, which with the current KCFG facilities will require KM to deliver the KCFG signal to the cable television system headends by alternate means (such as microwave), another added expense.

In short, KM's current financial hardship in operating KCFG, as well as the implementation of its planned service improvements for both its analog and DTV facilities, would make it unduly burdensome for KM to pay the \$43,225 regulatory fee that would be due from a Phoenix DMA station, in addition to the inequities that arise from KCFG and Flagstaff -- which essentially are a small market station in a small market -- happening to fall in the Phoenix DMA, DMA No. 17. Even payment of the \$43,225 and awaiting a refund later would impose a severe financial hardship on KCFG, plus would reduce service to the community by severely hampering KM's ability to implement the planned analog television station and cable carriage improvements.

Accordingly, for the reasons stated herein, KM respectfully requests that the Commission reduce the annual regulatory fee due from KM for KCFG for fiscal year 2003 from \$43,225 to \$4,450 (or waive the fee entirely). KM also requests that the Commission defer the deadline by which KM must pay such annual regulatory fee, based on the financial hardship and reduction of service factors demonstrated herein; however, KM is timely paying its proposed reduced fee of \$4,450 by the September 25, 2003 payment deadline.

Please date-stamp the enclosed additional "FILE" copy of this filing and return it the undersigned in the enclosed self-addressed stamped envelope. Any questions regarding this filing and the requests made herein may be directed to the undersigned counsel for KM.

Very truly yours,



Jeffrey L. Timmons

Attachment

cc: Mrs. Myoung Hwa Bae

DECLARATION OF KEVIN JOEL BAE

I, Kevin Joel Bae, under penalty of perjury and pursuant to Section 1.16 of the Federal Communications Commission's rules, 47 C.F.R. § 1.16, do hereby declare that:

1. I am Vice President and Secretary of KM Television of Flagstaff, L.L.C. ("KM"), licensee of full power commercial television broadcast station KCFG(TV), analog Channel 9, Flagstaff, Arizona ("KCFG").

2. I have reviewed the request for reduction or waiver of the annual regulatory fees for fiscal year 2003 for KCFG to which this declaration is attached, and the facts set forth therein are true and correct to the best of my knowledge and belief.

3. I certify that the unaudited Statement of Revenue & Expenses for calendar (and fiscal) year 2002 and Statement of Assets, Liabilities & Equity as of December 31, 2002 for KM are true and correct in all material respects, and were prepared in accordance with generally accepted accounting principles, to the best of my knowledge and belief.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief. Executed this 24th day of September, 2003.



Kevin Joel Bae, Vice President and Secretary
KM Television of Flagstaff, L.L.C.

CD NO	CD DATE	FEE CONTROL NO.	FRN	PAYER NAME	TRANSACTION DATE	RECEIPT AMOUNT
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CD NO.	CD DATE	FEE CONTROL NO.	FRN	PAYER NAME	TRANSACTION DATE	RECEIPT AMOUNT
560812	9/25/03	0309258835416002	0002842219	KM Communications, Inc.	9/27/03	\$50,355.00
Seq: 1	Call Sign: KMKRTV	FCC Code 1: 35096		FCC Code 2: IATOWACITY	Tin Number:	
PTC: 0362	QTY: 1	Applied Amt:		4975.00		
Applicant Name: KM TELEVISION OF IOWA	L L C					
Address: 3654 WEST JARVIS AVENUE						
Seq: 2	Call Sign: KCFTV	FCC Code 1: 35104		FCC Code 2: AZFLAGSTAFF	Tin Number:	
PTC: 0357	QTY: 1	Applied Amt:		4450.00		
Applicant Name: KM TELEVISION OF FLAGSTAFF	L L					
Address: 3654 WEST JARVIS AVENUE						
Seq: 3	Call Sign: KBEOTV	FCC Code 1: 35103		FCC Code 2: WYJACKSON	Tin Number:	
PTC: 0358	QTY: 1	Applied Amt:		4625.00		
Applicant Name: KM TELEVISION OF JACKSON	L L C					
Address: 3654 WEST JARVIS AVENUE						
Seq: 4	Call Sign: KEJBTV	FCC Code 1: 84164		FCC Code 2: ARELDORADO	Tin Number:	
PTC: 0364	QTY: 1	Applied Amt:		8300.00		
Applicant Name: KM TELEVISION OF EL DORADO	L L					
Address: 3654 WEST JARVIS AVENUE						
Seq: 5	Call Sign: KKBTV	FCC Code 1: 35097		FCC Code 2: IDBOISE	Tin Number:	
PTC: 0364	QTY: 1	Applied Amt:		8300.00		
Applicant Name: KM TELEVISION OF BOISE	L L C					
Address: 3654 WEST JARVIS AVENUE						
Seq: 6	Call Sign: 970328KK	FCC Code 1: 86205		FCC Code 2: IDPOCATELLO	Tin Number:	
PTC: 0364	QTY: 1	Applied Amt:		8300.00		
Applicant Name: POCATELLO CHANNEL 15	L L C					
Address: 3654 WEST JARVIS AVENUE						
Seq: 7	Call Sign: WOCKCA	FCC Code 1: 35092		FCC Code 2: ILCHICAGO	Tin Number:	
PTC: 0367	QTY: 1	Applied Amt:		365.00		
Applicant Name: KM LPTV OF CHICAGO	13 L L C					
Address: 3654 WEST JARVIS AVENUE						
Seq: 8	Call Sign: WMECA	FCC Code 1: 35091		FCC Code 2: WIMILWAUKEE	Tin Number:	
PTC: 0367	QTY: 1	Applied Amt:		365.00		
Applicant Name: KM LPTV OF MILWAUKEE	L L C					
Address: 3654 WEST JARVIS AVENUE						
Seq: 9	Call Sign: WSKLP	FCC Code 1: 35090		FCC Code 2: GAATLANTA	Tin Number:	
PTC: 0367	QTY: 1	Applied Amt:		365.00		
Applicant Name: KM LPTV OF ATLANTA	L L C					
Address: 3654 WEST JARVIS AVENUE						
Seq: 10	Call Sign: WPNW701	FCC Code 1:		FCC Code 2:	Tin Number:	
PTC: 0369	QTY: 1	Applied Amt:		10.00		
Applicant Name: KM LPTV OF ATLANTA	L L C					
Address: 3654 WEST JARVIS AVENUE						
Seq: 11	Call Sign: WOCHLP	FCC Code 1: 35101		FCC Code 2: ILCHICAGO	Tin Number:	
PTC: 0367	QTY: 1	Applied Amt:		365.00		
Applicant Name: KM LPTV OF CHICAGO	28 L L C					
Address: 3654 WEST JARVIS AVENUE						
Seq: 12	Call Sign: WPNNGFM	FCC Code 1: 78442		FCC Code 2: GAPEARSON	Tin Number:	
PTC: 0341	QTY: 1	Applied Amt:		475.00		
Applicant Name: KM RADIO OF PEARSON	L L C					
Address: 3654 WEST JARVIS AVENUE						
Seq: 13	Call Sign: KBYFM	FCC Code 1: 78433		FCC Code 2: CAMERCE	Tin Number:	
PTC: 0342	QTY: 1	Applied Amt:		950.00		
Applicant Name: KM RADIO OF MERCED	L L C					
Address: 3654 WEST JARVIS AVENUE						
Seq: 14	Call Sign: KMKFM	FCC Code 1: 78436		FCC Code 2: AZSTJOHNS	Tin Number:	
PTC: 0348	QTY: 1	Applied Amt:		1100.00		
Applicant Name: KM RADIO OF ST JOHNS	L L C					
Address: 3654 WEST JARVIS AVENUE						
Seq: 15	Call Sign: WPMH315	FCC Code 1:		FCC Code 2:	Tin Number:	
PTC: 0369	QTY: 1	Applied Amt:		10.00		
Applicant Name: KM RADIO OF ST JOHNS	L L C					

Address: 3654 WEST JARVIS AVENUE

Seq. 16 Call Sign: WMNWFM FCC Code 1: 82090 FCC Code 2: ILATLANTA
PTC: 0316 QTY: 1 Applied Amt: 1850.00
Applicant Name: KM RADIO OF ATLANTA L L C
Address: 3654 WEST JARVIS AVENUE

Tin Number:

Seq. 17 Call Sign: WDLJFM FCC Code 1: 78414 FCC Code 2: ILBREESE
PTC: 0316 QTY: 1 Applied Amt: 1850.00
Applicant Name: KM RADIO OF BREESE L L C
Address: 3654 WEST JARVIS AVENUE

Tin Number:

Seq. 18 Call Sign: WMKBFM FCC Code 1: 88204 FCC Code 2: ILEARLVILLE
PTC: 0316 QTY: 1 Applied Amt: 1850.00
Applicant Name: KM RADIO OF EARLVILLE L L C
Address: 3654 WEST JARVIS AVENUE

Tin Number:

Seq. 19 Call Sign: KTKBFM FCC Code 1: 86158 FCC Code 2: GUAGANA
PTC: 0316 QTY: 1 Applied Amt: 1850.00
Applicant Name: KM BROADCASTING OF GUAM L L C
Address: 3654 WEST JARVIS AVENUE

Tin Number:

Total. \$50,355.00



Payment Search Detail

Fee Control Number	Payor Name	Payment Amt	Overage Amt
0210228165291001	KM TELEVISION OF FLAGSTAF	\$135.00	\$0.00
0304238165520003	KM LPTV OF CHICAGO 28 LLC	\$145.00	\$0.00
0305168165809002	TIMMONS JEFFREY L	\$145.00	\$0.00
0305288180898899	Kevin J Bae	\$50.00	\$0.00
0309258835416002	KM COMMUNICATIONS INC	\$50,355.00	\$0.00
0310308165175002	KM TELEVISION OF FLAGSTAF	\$145.00	\$0.00

Credit Card Info

Payor Info

Red Check Info

Changer Info

Acct Info

☒ Also Show JV'd transactions

Sequence	Quantity	Payment Type Code	Payment Amount	Trans Code	CallSign Other Id	Treasury Symbol
6	1	0358	\$8,300.00	PMT	970328KK	27X6088
24	1	0358	(\$8,300.00)	ADJ	970328KK	27X6088
25	1	0364	\$8,300.00	PMT	970328KK	27X6088
3	1	0358	\$4,625.00	PMT	KBE0TV	27X6088

Menu to Display

FCC Code Info

Appoint Info

Treasury Info

Modify Payment

Close

Print Screen

Start



Microsof...

Inbox - ...

KCPG 20...

KCPG F...

PCC Coll...

3:36